

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Ashley M. v. Marcinkowski

2022 NY Slip Op 04437 (App. Div. 2022) · No. 102 CA 21-00492 · Decided July 8, 2022

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order granting renewal and denying defendants' motion to quash subpoenas and for a protective order in a personal-injury action involving an alleged dog attack. The court held that veterinary records were material and necessary to the action and that Education Law § 6714 does not prohibit veterinarians from producing treatment records pursuant to a subpoena.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Peradotto, J.P.; Lindley, J.; Curran, J.; Winslow, J.
JURISDICTION	New York
DECIDED	July 8, 2022
DOCKET	102 CA 21-00492
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiff leave to renew and, upon renewal, denying defendants' cross motion to quash subpoenas and for a protective order concerning nonparty veterinary records.
STANDARD OF REVIEW	Abuse of discretion for the grant of leave to renew; de novo review of the legal question concerning disclosure of veterinary records.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Jennifer Marcinkowski, Jeffrey Marcinkowski v. Ashley M., as parent and natural guardian of Gabriella M.

TOPICS

- discovery dispute
- motion for reconsideration
- statutory interpretation
- civil procedure
- evidence

PRACTICE AREAS

civil procedure

animal liability

discovery

QUESTIONS PRESENTED

1. Whether Supreme Court properly granted plaintiff leave to renew based on deposition transcripts unavailable when the original motions were decided.
2. Whether the veterinary records were material and necessary to the action under CPLR 3101(a).
3. Whether Education Law § 6714 prohibits a veterinarian from producing treatment records pursuant to a subpoena.

HOLDINGS

1. Supreme Court did not abuse its discretion in granting plaintiff leave to renew because the motion was based on new deposition facts that were unavailable when the original motion was decided and that would change the prior determination.
2. The veterinary records were material and necessary to the prosecution of plaintiff's action because they could contain information reasonably calculated to lead to relevant evidence.
3. Education Law § 6714 does not prohibit a veterinarian from providing treatment records pursuant to a subpoena.

KEY QUOTATIONS

*“Disclosure in civil actions is generally governed by CPLR 3101 (a), which directs: ‘[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof’” (*2)*

*“Nothing in the plain language of that statute prohibits a veterinarian from providing a copy of treatment records pursuant to a subpoena.” (*2)*

FACTUAL BACKGROUND

Plaintiff sued for injuries allegedly sustained by her infant child when defendants' dog attacked the child. Plaintiff subpoenaed the dog's veterinary records from two nonparty veterinary hospitals. Defendants opposed disclosure, claiming that Education Law § 6714 protected the records, and sought to quash the subpoenas and obtain a protective order.

PROCEDURAL HISTORY

Plaintiff sought veterinary records from two nonparty veterinary hospitals in an action for injuries allegedly caused by defendants' dog. Defendants opposed disclosure and cross-moved under Education Law § 6714 and CPLR 2304 and 3103. Supreme Court initially denied the parties' motions as premature and directed further discovery; after defendants were deposed, plaintiff moved to renew. Supreme Court granted renewal, denied defendants' cross motion, and deemed plaintiff's motion to compel moot. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Nationstar Mtge., LLC v Goodman, 187 AD3d 1635, 1636 (4th Dept 2020)
- University Sq. San Antonio, Tx. LLC v Mega Furniture Dezavala, LLC, 198 AD3d 1284, 1286 (4th Dept 2021)
- Brennan v Demydyuk, 196 AD3d 1113, 1114 (4th Dept 2021)
- Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406 (1968)
- Bozek v Derkatz, 55 AD3d 1311, 1312 (4th Dept 2008)
- Makinen v City of New York, 30 NY3d 81, 85 (2017)
- Matter of Walsh v New York State Comptroller, 34 NY3d 520, 524, 526-527 (2019)
- Matter of Encore Coll. Bookstores v Auxiliary Serv. Corp. of State Univ. of N.Y. at Farmingdale, 87 NY2d 410, 419-420 (1995)

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